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No. 20149

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH M. ARAGON,

Plaintiff and Appellant,

v.

R. A. WATHEN and C. A. YOUNG,

Defendants and Appellees.

Appeal from the United States District Court,
Southern District, Central Division

HONORABLE LEON R. YANKWICH, JUDGE

APPELLEES' BRIEF

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TABLE OF AUTHORITIES CITED

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APPELLEES' BRIEF

JURISDICTIONAL STATEMENT

The United States District Court's jurisdiction to entertain plaintiff's complaint rested on 28 U.S.C. § 1343. This court has jurisdiction to review that court's order dismissing appellant's complaint. 28 U.S.C. §§ 1291, 1294.

STATEMENT OF THE CASE

In a complaint "OF CIVIL RIGHTS DEPRIVATION" filed February 4, 1965, in the United States District Court, Southern District of California, Central Division, plaintiff alleged he was deprived of the right to convert class E Government Bonds into cash "as a result of a wilful and felonious conspiracy by the said defendant's [sic], denying plaintiff his CIVIL RIGHTS which he is entitled to as an AMERICAN CITIZEN OF THE UNITED STATES" in violation

of 18 U.S.C. § 241. (Complaint p. 3.)

On February 10, 1965, in the United States District Court, Southern District of California, Central Division, the Honorable Leon R. Yankwich ordered appellant's complaint be dismissed on the ground it failed to show appellant was entitled to the relief sought. (Order Dismissing Complaint, p. 1.) The Court also stated:

> "The petitioner is held by virtue of process issued by a state court. We cannot in this proceeding review that judgment, which has become final." (Order Dismissing Complaint, p. 4.)

The Court also noted that according to its records appellant had been charged in a complaint with violation of the Fair Labor Standards Act. (Order Dismissing Complaint, p. 1.) Pursuant to that complaint, a stipulated judgment was entered into by appellant personally, and by his counsel, with the United States Department of Labor. (Order Dismissing Complaint, p. 2.) The Court noted, "In view of this broad stipulation the petitioner cannot be heard to say, as he does in this petition, that he was deprived of any rights." (Order Dismissing Complaint, pp. 3, 4.)

On March 22, 1965, in the United States District Court, Southern District of California, Central Division, the Honorable Leon R. Yankwich vacated the order of February 10, 1965, which dismissed the complaint, on

the ground that reference was made to a Fair Labor Standards case in which it was mistakenly believed appellant was a party. Thereupon the court entered an order dismissing appellant's complaint on the ground it failed to show appellant was entitled to the relief sought, stating:

> "The petitioner is held by virtue of process issued by a state court. We cannot in this proceeding review that judgment, which has become final."

On April 14, 1965, appellant filed a Notice of Appeal from the "judgment and order" of March 22, 1965.

STATEMENT OF FACTS

Testimony was not taken, the matter being decided on the pleadings.

SPECIFICATION OF ERROR

Appellant contends:

1. The District Court erred in "denying generally the allegations of the complaint."

2. The District Court had jurisdiction under 28 U.S.C. §§ 1343, 1331.

3. The District Court had jurisdiction under 42 U.S.C. §§ 1983, 1985.

SUMMARY OF APPELLEES' ARGUMENT

Appellant fails to state a claim upon which relief may be granted.

ARGUMENT

THE COMPLAINT WAS PROPERLY DISMISSED

Appellant does not state a claim upon which relief may be granted under 18 U.S.C. § 241. Pugliano v. Staziak, 231 F. Supp. 347, 349 (Footnote) (W.D. Pa. 1964).

While appellant does not mention any other sections of the Civil Rights Act in his complaint, in his Notice of Appeal he seeks to invoke these sections -- 28 U.S.C. §§ 1331, 1343; 42 U.S.C. §§ 1983, 1985. Even considering these sections, appellant has failed to state a claim upon which relief may be granted. He alleges he desired to convert a Government Bond in his possession to cash and was denied that right by prison authorities. Appellant has lost his civil rights by virtue of being sentenced to state prison. Calif. Pen. Code § 2600 et seq. In any event, matters of this character are questions of prison discipline which do not involve a federal question. Tabor v. Hardwick, 224 F. 2d 526, 529 (5th Cir. 1955); United States v. Ragen, 213 F. 2d 294, 295 (7th Cir. 1954); United States v. Radio Station WENR, 209 F. 2d 105, 107 (7th Cir. 1953); Curtis v. Jacques, 130 F. Supp. 920, 921 (Dist. Ct. Mich. 1954).

CONCLUSION

The trial court properly dismissed appellant's complaint. The order should be affirmed.

Respectfully submitted,

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WILLIAM E. JAMES,
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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing brief is in full compliance with those Rules.

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